No. 972 / 109
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IN THE

Supreme Court of the United States

J. D. CONLEY, STANLEY MOORE, SR., GEORGE L. CARTER AND B. A. WATSON,

Appellants,

v.

PAT. J. GIBSON, GENERAL CHAIRMAN OF LOCALS 6051 AND 28, RAYMOND DICKERSON, DIVISION CHAIRMAN OF LOCALS 6051 AND 28, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, A. F. OF L. AND LOCAL 28 OF THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES,

Appellees

PETITION FOR A WRIT OF CERTIORARI

to the United States Circuit Court of Appeals for the Fifth Circuit

ROBERSON L. KING
Counsel for Petitioners

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Petitioners J. D. Conley, Stanley Moore, Sr., George L. Carter and B. A. Watson, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on January 31, 1956.

Citations to Opinions Below

The opinion of the United States District Court of the Southern District of Texas is unreported and is printed in Appendix B hereof, infra, p. 11. The memorandum opinion of the Circuit Court of Appeals, Fifth Circuit is in the certified copy of the record (R. p. 31), and is officially reported in 229 F. 2d 436 and is printed in Appendix C hereof, infra, p. 16.

Jurisdiction

The Judgment of the Circuit Court of Appeals was entered on January 31, 1956 (R. p. 31). Rehearing was denied on March 15, 1956 (R. p. 43). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

Questions Presented

Whether acts or omissions, racially discriminatory in nature, practiced by the exclusive bargaining representative of a craft, against Negro members of the craft, where there are no allegations that the bargaining representative was unlawfully selected nor that the collective agreement is dicriminatory in its provisions, is such a breach of the statutory duty imposed upon such representative by the National Railway Labor Act as might be redressed by Negro members of the craft so harmed by suit in the Federal District Court for injunctive relief and for damages?

Whether the cause of action alleged in the Instant Case, there being a dispute between employees and their representative and not between the union and a Carrier, is within the exclusive original jurisdiction of the National Railroad Adjustment Board because no facts alleging a discriminatory collective bargaining agreement are set out therein?

Statutes Involved

The statutory provisions involved are the National Labor Relations Act 45 U.S.C. 152, 153; 28 U.S.C. 1331, 28 U.S.C. 1254. They are printed in Appendix A hereof, infra p. 9.

Statement

Petitioners, J. D. Conley, Stanley Moore, Sr., George L. Carter and B. A. Watson, Negro employees of the Texas and New Orleans' Houston, Texas Installation (Freight House), filed their complaint against Pat J. Gibson, General Chairman of Locals 6051 and 28, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Raymond Dickerson, Division Chairman of the Two Locals aforesaid and Local 28 of the aforesaid Brotherhood, which is an organization composed solely of members of the white race (R. p. 9), alleging breach of the statutory duty imposed by the National Railway Labor Act by conduct and acts of both omission and commission which sought to discriminate against petitioners because of their race or color. The acts of racial discrimination complained of herein crystalized on or about the 1st day of May, 1954 when many of petitioners were fired summarily and without notice, and were denied a hearing hereon by the said union representative. Petitioners were told that their jobs had been abolished, however, white employees were hired to do many of these same jobs and some of these Negro employees were rehired but were hired with loss of all accrued seniority. No white employees were discharged because of what the union and carrier termed a lease of a portion of the working area to the Southern Pacific Transport Company, which said union termed to be the cause of the job insecurity

affecting petitioners. The petitioners further allege that these acts are calculated to either relieve them from service altogether or to reduce them to the least preferential rank possible, in an effort to subjugate the employment rights of Negro employees to those of the white employees.

Respondents filed their joint motion to dismiss on November 5, 1954 and the Court filed its memorandum opinion on March 16, 1955 denying petitioners the relief sought and entered its final order of dismissal on March 21, 1955.

The Circuit Court of Appeals, Fifth Circuit, affirmed the action of the District Court, by an opinion January 31, 1956.

Reasons for Granting the Writ

1. The decision of the Court below in the Instant Case and in *Hettenbaugh, et al. v. Airline Pilots Ass'n International*, 189 F. 2d 319, upon the authority of which the instant case was decided are directly in conflict with the decision the Fourth Circuit Court of Appeals in *Dillard, et al. v. Chesapeake & O. Ry. Co., et al.*; 199 F. 2d 948. The conflict is evinced by the fact that in the *Dillard* Case, the Court held that the Federal District Court had jurisdiction to try a cause in which Negro plaintiffs charged their collective bargaining representative with acts of racial discrimination which did not involve the negotiation of a racially discriminatory collective agreement, whereas the *Hettenbaugh* Case held that plaintiffs could not maintain an action against their collective bargaining representative for employment discrimination since they did not allege that the defendant union had negotiated a discriminatory collective bargaining agreement. The Court of Appeals in the *Dillard* Case thought that the following cases were applicable: *Steele v. Louisville & N. R. Co.*, 323 U.S. 192; *Tun-*

stall v. Brotherhood of Locomotive Firemen & Enginemen, 323 U.S. 210; *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768. The appellate Court in the *Hettenbaugh* Case, on the other hand, which the lower courts in the instant case followed, thought the *Steele, Tunstall* and *Howard* Cases, Supra, inapplicable and distinguishable.

2. The decision of the court below is believed to be erroneous and the conflicting decision of the Fourth Circuit Court of Appeals in *Dillard, et al. v. Chesapeake & O. Ry. Co., et al.*, 199 F. 2d 948, supra, correct. In addition, the decision below conflicts with applicable decisions of this Court. The decisions of this Court with which the holding below is in conflict are the *Steele, Tunstall* and *Howard* cases cited under paragraph 1, supra. The *Steele* Case laid the foundation which the two latter cases followed by announcing the rule that an exclusive bargaining agent owes a duty under the National Railway Labor Act to members of the craft whom it represents not to discriminate, and to protect from discrimination, on account of race or color. Though the *Steele* Case involved a discriminatory collective bargaining agreement, it is clear that the broad language of the opinion intended that the Federal Courts protect from any acts of discrimination where Congress clearly had afforded no other means of redress. Hence, even though the *Steele* Case patently involved discrimination as per contract, the Court was still constrained to determine whether petitioners in that case had an adequate remedy before the Railroad Adjustment Board before they could be remanded back to the Federal District Court. This determination the Court made by comparing the language of the Act with the facts and determined that the Act did not provide avenues of redress for the petitioners, in the following language:

> "Section 3, First (i) which provides for reference to the Adjustment Board of "disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements", makes no reference to disputes between employees and their representatives. Even though the dispute between the railroad and the petitioner were to be heard by the Adjustment Board, that Board could not give the entire relief here sought. The Adjustment Board has consistently declined in more than 400 cases to entertain grievance complaints by individual members of a craft represented by a labor organization."

The instant case reached a result in conflict with the plain and unambiguous criteria set forth above from the *Steele* Case. For, in the instant case petitioners sue their representative not the carrier. They therefore cannot be brought within the spirit and letter, Sec. 3, First (i) of the Act. The instant case, however, reaches this conflicting result by application of the doctrine of the *Hettenbaugh* Case, supra, which latter case misapplied the doctrine of *Slocum v. Delaware, L. & W. R. Co.*, 339 U.S. 239, which involved a railroad-employee dispute; the *Hettenbaugh* Case applying the law with regard to a railroad-employee dispute to facts involving a dispute between employees and their representatives. The *Slocum* Case decided, in line with the previously applicable Supreme Court decisions interpreting Section 3, First (i) of the Railway Labor Act, that where the carrier sued two unions which were at dispute over the scope of their two respective agreements with the carrier the federal district court was without jurisdiction since questions of interpretation of the collective agreements was concerned. Hence this was the perfect situation involving the coalescence of the two requisites under the

statute to give the Adjustment Board jurisdiction—i.e. - (1) a dispute between carrier and union and (2), a question of the interpretation of an agreement. The *Hettenbaugh* Case did not involve a dispute between a carrier and a union nonetheless it wrongfully applied the principle of law announced in the *Slocum* Case and commended the Plaintiffs to relief afforded by the Adjustment Board.

3. The question presented is of paramount importance because it is concerned principally with the administration of the National Railway Labor Act. Nothing at present indicates precisely how the Supreme Court views this matter of employee-representative suits alleging discriminatory acts not concerned with negotiation of discriminatory contracts, and it is therefore important and necessary that uniformity in construction of the Act be insured to prevent disparity between relief granted which will depend upon the choice of forum or the chance of domicile and the Circuit Court of Appeals which passes upon the controversy.

The question involved is further important because it involves an industry which is so significant to national welfare that it has been made the subject of a separate act with regard to labor relations rather than placing it with other of the nation's industries under a single act (The National Labor Relations Act). A decision in this case is also important because it directly involves not only a significant number of employees in the industry (Negroes) but because it involves a substantial segment of the Negro population of America, employees on the nation's railroads, and hence it is important to America at large.

It is also important to determine whether the Railroad Adjustment Board is the proper tribunal before which to

take such disputes or whether in fact the petitioners, if denied redress in the Federal Courts, would be without remedy save at the behest of their representative, *Steele* Case, Supra.

Conclusion

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

ROBERSON L. KING
Counsel for Petitioners

DATE: May 21, 1956

APPENDIX A

45 U.S.C. 152
General duties—

Fourth. Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purpose of this Act.

45 U.S.C. 153.
National Railroad Adjustment Board.—First. Establishment; composition; powers and duties; divisions; hearings and awards.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act (June 21, 1934), shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

28 U.S.C. 1254
Courts of Appeal-Certiorari-Appeal-Certified Questions.—

Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. 1331

Federal Question-Amount in Controversy.—The District Courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States.

APPENDIX B

In The
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

J. D. CONLEY, ET AL., :
-vs- : CIVIL ACTION NO. 8443
PAT J. GIBSON, ET AL. :

Dent, Ford, King & Wickliff, (Roberson King), of Houston, Texas; for Plaintiffs.

Fulbright, Crooker, Freeman, Bates & Jaworski (Chester M. Fulton), of Houston, Texas; and Mulholland, Robie & Hickey, of Washington, D.C.; for Defendants.

March 16, 1955

KENNERLY, District Judge:

Plaintiffs J. D. Conley, Stanley Moore, Sr., George L. Carter and B. A. Watson allege in their complaint that they bring this suit under the National Railway Labor Act (Title 45, Section 151, U.S.C.A.).

They say they are citizens of the United States and of the State of Texas, and that they are negro employees of the Texas & New Orleans Railroad Company and/or the Southern Pacific Transport Company, corporations doing business in Houston, Harris County, Texas. That they are members of a national labor union or organization known

as the Brotherhood of Railroad & Steamship Clerks, Freight Handlers, Express and Station Employees (for brevity called "Brotherhood"). That the Brotherhood has in Houston, Texas, a local union or subsidiary composed of white men and known as Local 28, and a similar local union or subsiduary composed of negro men known as Local 6051.

Plaintiffs sue Pat J. Gibson as General Chairman of Locals 6051 and 28, and Raymond Dickerson, Division Chairman thereof. They also sue Local 28. Whether the Brotherhood is sued is not entirely clear, but I am assuming that it is a party defendant herein.

Defendants have moved to dismiss alleging lack of jurisdiction, defect of parties defendant, that Plaintiffs do not in their complaint present a justiciable issue and that such complaint fails to state a claim upon which relief can be granted. This is a hearing under Local Rule 25 of such motion.

1. Plaintiffs allege that Local No. 28 is the bargaining agent of the members of the Brotherhood and has been so designated in pursuance of such Act. That Local 28 has negotiated with such Railroad Company, et al., a working agreement to which Plaintiffs refer in their complaint.[1]

Reference is made to Plaintiffs' complaint as a whole. While Plaintiffs' allegations are not at all clear, the nature of Plaintiffs' case and the relief sought appears to be stated in paragraph three of Plaintiffs' complaint (their prayer) in which they pray that the Court enter a final decree—

> (a) Declaring that the segregation of negro employees of the craft represented by the Brotherhood into a separate local is illegal under the National Labor

[1] A copy of such agreement does not appear to be among the papers in the case.

Relations Act, and is contrary to the Union Shop Agreement of March 1, 1953, and permanently and perpetually enjoin the Brotherhood, its agents, officers, representatives or any of them from requiring plaintiffs to maintain membership in the Union by joining Local 6051, the segregated local—

(b) That the Defendants, and each of them, their servants, agents, members and officers are permanently and perpetually restrained and enjoined from refusing to bargain for plaintiffs and those whom they represent on a basis equal to that afforded to white employees, clerks, who are also represented by the Brotherhood of Railway and Steamship Clerks—

(c) That the defendants, and each of them, their servants, agents, members and officers, are permanently and perpetually restrained from refusing to protect plaintiffs and those whom they represent from discriminatory action because of race or color from whatever quarter emanating.

In paragraph four of their prayer they also pray—

That this Court issue a permanent injunction forever restraining the defendants, and each of them, their agents, servants, officers and members from permitting, or engaging in any discrimination toward plaintiffs and those whom they represent, from allowing plaintiffs jobs to be abolished summarily, and from allowing the discharge of plaintiffs and those whom they represent, the termination of their seniority on account of race or color when employees of the white race, clerks, are not so affected; and that the defendants be restrained from being or purporting to act as exclusive collective bargaining agent with the T. & N. O. Railroad Company concerning grievances, labor disputes, wages, rates of pay, and hours of employment so long as any acts of discrimination continue, and unless and until the defendant, Labor Union, its agents, servants, officers and members give these plain-

tiffs and all of the other negro employees whom they represent, equality of representation on any phase of labor negotiations.

In paragraph five of their prayer they also pray—

> Plaintiffs further pray that this Court award them judgment for damages in the amount of Seventy-five Thousand Dollars ($75,000.00).

Citing Moore v. Illinois Central R. Co., 312 U.S. 630; Order of Railway Conductors v. Pitney, 326 U.S. 561; Slocum v. Delaware, L. & W. R. R. Co., 339 U.S. 239; Order of Railway Conductors v. Southern R. Co., 339 U.S. 255; Hettenbaugh v. Airlines Pilots Assn. International, 189 F. (2d) 319; Hayes v. Union Pacific Co., 84 F. (2d) 337, cert. den. 340 U.S. 942, 88 F. Supp. 108; Kendall v. Pennsylvania Railroad Co. (D.C. Ohio), 94 F. Supp. 875; Van Zandt v. Railway Express Agency (D.C. N.Y.) 99 F. Supp. 520; Butler v. Thompson (C.A. 8), 192 F. (2d) 831, Defendants say in support of their Motion to Dismiss and their claim that this Court is without jurisdiction. That since Plaintiffs raise no question of the (1) *lawfulness of the selection of Local 28 as a bargaining agent,* (2) nor of the *validity of such bargaining agreement,* jurisdiction is not here. That the Federal Courts are not charged with the duty of policing parties in the performance of collective bargaining agreements under such Act. They press the point that this case should be dismissed for lack of jurisdiction. I think and conclude that Defendants' position is well taken and their Motion to Dismiss should be granted.

The case of Moore v. Illinois Central Railroad Company, supra, standing alone may throw some doubt upon this

conclusion, but that case does not stand alone. It has been modified and limited by the many cases cited. The present ruling is well stated by the Court of Appeals for this circuit in Hattenbaugh, et al. v. Airline Pilots Assn:, supra, where it is said:

> "The Congress did not, by the Railway Labor Act, grant jurisdiction to the federal courts to afford relief for breaches of performance of collective bargaining agreements. Appropriate quasi-judicial tribunals have been established for that purpose. Slocum v. Delaware L. & W. R. Co., 339 U.S. 239, 70 S. Ct. 577, 94 L. Ed. 795. It is only when collective bargaining agreements are unlawfully entered into, or when the agreements themselves are unlawful in terms or effect, that federal courts may act. The question of federal jurisdiction being decisive, it is not necessary to consider the other contentions made by the parties. The dismissal of the cause for want of jurisdiction was correct."

Plaintiffs apparently stand upon Steele v. Louisville & Nashville Railroad Co., 323 U.S. 193, and Tunstall v. Brotherhood, 323 U.S. 211, but those cases are fully considered and differentiated by the Court of Appeals of the Ninth Circuit in Hayes v. Union Pacific R. Co., cited above.

Because of my conclusion that this Court is without jurisdiction, it is not necessary to discuss the other question presented.

Let an order be drawn and presented dismissing the case.

The Clerk will file this
opinion.

/s/ T. M. KENNERLY
United States District Judge

APPENDIX C

In The

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 15566

J. D. CONLEY, STANLEY MOORE, SR., GEORGE L. CARTER, and B. A. WATSON,
Appellants,

versus

PAT J. GIBSON, GENERAL CHAIRMAN OF LOCALS 6051 and 28, ET AL.,
Appellees

Appeal from the United States District Court for the Southern District of Texas

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(January 31, 1956)

Before HUTCHESON, Chief Judge, and HOLMES and RIVES, Circuit Judges. PER CURIAM:

The judgment appealed from is affirmed. Slocumb v. Delaware, L. & W. R. Co., 339 U.S. 239; Hettenbaugh v. Air Line Pilots Association, 189 F. (2) 319.

[Seal]
A true copy
Test: JOHN A. FEEHAN, JR.,
Clerk, U. S. Court of Appeals, Fifth Circuit

By CLARA R. JAMES
Deputy

New Orleans, Louisiana
Mar. 27, 1956